

1
2
3
4
5
6
7
8
9
10
11
12

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JO ANN FEIKES,

Plaintiff,

v.

CARDIOVASCULAR SURGERY
ASSOCIATES PROFIT SHARING PLAN,
TRUST, et al.,

Defendants.

2:04-cv-1724-LDG-GWF

ORDER

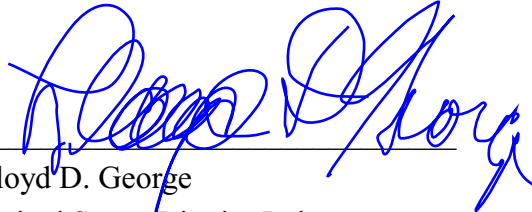
13 This case involves a dispute whether defendants improperly handled and distributed
14 plaintiff's share of a profit sharing plan, and whether yearly distributions to plaintiff should have
15 been timed to reflect plan earnings and losses during such years. Plaintiff and defendants have
16 filed cross-motions for summary judgment and numerous supplemental briefs. The parties
17 extensively argue the appropriate standard of review of the actions of the plan. Plaintiff argues
18 that, among other things, the absence of an administrative record warrants de novo review.
19 Defendants, however, "[disagree] with Plaintiff and [assert] that there is in fact an administrative
20 record applicable to this case." Defs.' Reply Showing That De Novo Review is Not Appropriate
21 Under the Circumstances of This Case 13 n.11, July 29, 2009, ECF. No. 103. The court has
22 unsuccessfully searched the voluminous filings for documents designated as the administrative
23 record.

24 The administrative record is necessary to determine the standard of review applicable to a
25 plan's actions. *See, e.g., Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 970 (9th Cir. 2006)
26 ("The district court may, in its discretion, consider evidence outside the administrative record to

1 decide the nature, extent, and effect on the decision-making process of any conflict of interest; the
2 decision on the merits, though, must rest on the administrative record once the conflict (if any) has
3 been established, by extrinsic evidence or otherwise.”). The administrative record is also central to
4 a court’s analysis of an administrator’s actions under either standard of review. *See id.* (“[A]
5 district court may review only the administrative record when considering whether the plan
6 administrator abused its discretion”); *Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1090 (9th
7 Cir. 1999) (“If a court reviews the administrator’s decision, whether de novo as here, or for abuse
8 of discretion, the record that was before the administrator furnishes the primary basis for review.”).
9 Thus, an administrative record composed of “the evidence that was before the plan administrator at
10 the time of determination” is essential to this court’s analysis of the case. *Opeta v. Northwest*
11 *Airlines Pension Plan for Contract Employees*, 484 F.3d 1211, 1217 (9th Cir. 2007). The
12 Defendants shall, therefore, clarify the scope of such “determination” and identify the
13 corresponding administrative record. Accordingly,

14 THE COURT HEREBY ORDERS Defendants to identify the administrative record
15 applicable to this case within fifteen (15) days of this Order. Defendants may either direct the court
16 to a previously filed copy of the administrative record or refile the administrative record as
17 necessary.

18
19 DATED this 20 day of October, 2010.

20
21
22
23 
24 Lloyd D. George
25 United States District Judge
26